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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/619,510	07/16/2003	Robert Maerz	48836-00002	7515
22204 7590 12/31/2007 NIXON PEABODY, LLP 401 9TH STREET, NW SUITE 900 WASHINGTON, DC 20004-2128			EXAMINER AKINTOLA, OLABODE	
			ART UNIT 3691	PAPER NUMBER
			MAIL DATE 12/31/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/619,510	MAERZ ET AL.	
	Examiner	Art Unit	
	Olabode Akintola	3691	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 July 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-50 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-50 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>7/16/03;11/12/06</u> | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 1-50 are rejected under 35 U.S.C. 103(a) as being unpatentable over Keiser et al (US 6505174) in view of Wallman (6601044).

Re claims 1, 28 and 49-50: Wallman teaches a method and corresponding system for establishing a product for investment in securities, the method comprising: grouping securities into a portfolio; and offering said portfolio for investment (col. 15, lines 46 through col. 16, line 22).

Wallman does not explicitly teach entertainment creations as securities. Keiser teaches entertainment creations as securities for investment (abstract, col. 6, lines 43-58). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Wallman to include securities representing entertainment creations. One would have been motivated to do so

in order to offer investors investments in entertainment creations.

The entertainment creation(s) hereinafter interpreted security(ies)

Re claim 2: Wallman teaches wherein said step of grouping said securities into a portfolio further comprises combining a plurality of securities (col. 15, lines 46 through col. 16, line 22).

Re claims 3 and 30: Wallman teaches assigning a rating to a security (col. 15, lines 46 through col. 16, line 22).

Re claims 4 and 32: Wallman teaches wherein said step of grouping said securities into a portfolio is based on a rating value (col. 15, lines 46 through col. 16, line 22).

Re claims 5 and 33: Wallman does not explicitly teach wherein said rating value is based on whether a development organization has made a final decision as to whether to continue the development of said entertainment creations. However, Keiser teaches rating movies stock based on the number of films a star associated with the stock has appeared in, the length of the star's career as well as other market factors (col. 18, lines 19-39, col. 23, lines 45-54). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify Wallman in view of Keiser to include ratings based on whether a final decision is made to continue the development of the creation. One would have been motivated to do so in order to allow the investor to make a well informed decision on whether to invest in said portfolio based

on the rating associated with the underlying securities.

Re claims 6 and 34: Wallman teaches wherein said rating value is based on an initial evaluation of the security (col. 15, lines 46 through col. 16, line 22).

Re claims 7, 29 and 35: Wallman teaches reporting an investment history of said portfolio (col. 4, lines 25-26; col. 23, lines 64-67).

Re claim 8: Wallman teaches wherein said investment history is reported over the Internet (col. 4, lines 25-26; col. 23, lines 64-67).

Re claim 9: Wallman teaches reporting said investment history by use of a computer to display investment data (col. 12, lines 42-46; col. 4, lines 25-26; col. 23, lines 64-67).

Re claim 10: Wallman does not explicitly teach reporting said investment history by use of a telephone to relay investment data. However, Wallman teaches the step comprising reporting said investment history by use of a computer to display investment data (col. 12, lines 42-46; col. 4, lines 25-26; col. 23, lines 64-67).

Official notice is hereby taken that it is old and well known to report transactions by use of a telephone to relay transaction data. *For example, in the banking sector, all account activities (debit and credit) involving a customer that can be displayed to said customer via the Internet can also be relayed to the customer over the telephone via automated telephone services. That is,*

the customer (using a username and password) can view all account activities online or may listen (using account number and password) to the same information concerning said activities over the telephone.

Therefore it would have been obvious to one of ordinary skill in the art at the time of the invention to modify Wallman in view of Keiser to include the step of reporting said investment by use of a telephone to relay investment data, because it provides the user with an alternative to a computer or the internet.

Re claims 11 and 31: Wallman teaches branding said portfolio of securities (col. 15, lines 46 through col. 16, line 22).

Re claims 12-18 and 36-39: Wallman and Keiser do not explicitly teach wherein the step of assigning a rating further comprises conducting a survey of said securities to determine a trade volume, wherein said trade volume is based on an average exchange trading day, wherein said survey is conducted over the Internet, conducting said survey by use of a computer to aggregate trade volume data, conducting said survey by use of any one of a telephone, modem, or wireless technology to relay trade volume data, wherein the step of conducting a survey further comprises determining an initial day's rating for said security, wherein the step of determining an initial day's rating is based on the first twenty-one (21) days that a security is grouped into a portfolio. However, Official notice is hereby taken that surveying securities to determine a trade volume and the other aforementioned steps are old and well known. Therefore, it would have been

obvious to one of ordinary skill in the art at the time of the invention to modify Wallman in view of Keiser to include these features. One would have been motivated to do so in order to obtain accurate assessment of the market direction of the security.

Re claims 19 and 40: Wallman teaches wherein the step of assigning a rating further comprises providing an entertainment creation designer listing (col. 15, lines 46 through col. 16, line 22).

Re claims 20 and 41: Wallman does not explicitly teach wherein the step of assigning a rating further comprises calculating an entertainment creation designer rating based on a percentage of times an entertainment creation designer is listed. However, Keiser teaches rating movies stock based on the number of films a star associated with the stock has appeared in, the length of the star's career as well as other market factors (col. 18, lines 19-39, col. 23, lines 45-54). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify Wallman in view of Keiser to include ratings based on the number of times a designer is listed. One would have been motivated to do so in order to allow the investor to make a well informed decision on whether to invest in said portfolio based on the rating associated with the underlying securities.

Re claims 21-22 and 42-43: Wallman does not explicitly teach wherein the step of conducting a survey further comprises determining a production rating and designating said production rating

with a value when an entertainment creation matures from a first stage of development to a second subsequent state of development.

Keiser teaches market research tool at col. 5, lines 40-50. This feature is analogous to the Nielsen ratings in TV broadcasting in which a survey of a particular TV program is carried out on viewers to determine the number of people who actually watched the program, leading to the rating of such a program. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Wallman in view of Keiser to include this feature in order to ascertain the number of investor interested in the portfolio.

Re claim 23-27 and 44-48: Wallman does not explicitly teach wherein the step of assigning a rating further comprises conducting a mock trading procedure over the Internet for said entertainment creation, wherein said step of conducting a mock trading procedure generates a rating based on a number of times an entertainment creation is traded, calculating ratings by use of a computer, calculating said ratings by aggregating a database of rating inputs, accessing said database of rating inputs via the Internet.

Official notice is hereby taken that it is old and well known to conduct mock trading and to rate a security based on the number of times said security is traded. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Wallman in view of Keiser to include this feature in order to ascertain the number of investor interested in the portfolio.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Olabode Akintola whose telephone number is 571-272-3629. The examiner can normally be reached on M-F 8:30AM -5:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Alexander Kalinowski can be reached on 571-272-6771. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

OA


HANI M. KAZIMI
PRIMARY EXAMINER